

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN CASE 19-04-005:

This proceeding was filed on April 5, 2019, and is assigned to Commissioner Darcie L. Houck and Administrative Law Judge (ALJ) Charles Ferguson. This is the decision of the Presiding Officer, ALJ Ferguson.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:lil

Attachment

ALJ/POD-CFG/lil

Decision **PRESIDING OFFICER'S DECISION OF ALJ FERGUSON**
(Mailed 8/5/2021)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Fred Sahadi, individually and as
Trustee of the Fred Sahadi Revocable
Living Trust,

Complainant,

vs.

San Jose Water Company (U168W),

Defendant.

Case 19-04-005

John L. Clark, Attorney at Law, for Fred Sahadi,
Complainant.

Martin Mattes, Attorney at Law, for San Jose Water
Company, Defendant.

**PRESIDING OFFICER'S DECISION DENYING
COMPLAINANTS' REQUESTED RELIEF**

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**PRESIDING OFFICER'S DECISION DENYING
COMPLAINANTS' REQUESTED RELIEF**

Summary

In this proceeding, the complainant, Fred Sahadi, acting individually and as Trustee of the Fred Sahadi Revocable Living Trust (collectively, Mr. Sahadi), seeks a credit of \$158,245 to offset against an invoice from the respondent San Jose Water Company (SJWC) for precisely the same amount.

SJWC's invoice represents work that SJWC had performed for Mr. Sahadi's benefit during a six-week period in 2019 to provide water and firefighting service to a new housing development Mr. Sahadi was building adjacent to Santella Drive. The physical construction work was begun in mid-March 2019 and completed in six weeks on May 2, 2019. In general, Mr. Sahadi complains about the cost of the work, the time it took to plan and complete the work, and the additional construction and carrying costs it allegedly caused him to bear in connection with the housing project.

In addition to the cash credits he seeks for himself, Mr. Sahadi asks that SJWC be ordered "to address systemic managerial and operational problems" that allegedly caused delays in getting the work done. And, he asks that SJWC be ordered to "pay a penalty in the range of \$100,000 to \$200,000." Sahadi Post-Hearing Opening Brief (OB), at (unnumbered) pp. iv-v.

Mr. Sahadi's requests are denied for the reasons set forth herein.

This proceeding is closed.

1. Jurisdiction

Public Utilities Code section 1702¹ provides that any person or organization may file a written complaint with the Commission "setting forth

¹ All statutory references are to the Public Utilities Code unless otherwise noted.

any act or thing done or omitted to be done by any public utility ... claimed to be in violation, of any provision of law or of any order or rule of the commission.”

Mr. Sahadi identifies section 451² and portions of the Commission’s General Order (GO) 103-A as authority for awarding him the monetary relief he seeks for himself and the injunctive and other relief he proposes.

More specifically, Mr. Sahadi claims that San Jose Water Company (SJWC) violated GO 103-A and section 451 by failing to maintain at least 30 inches of dirt or other material as cover for its pipeline underneath Santella Drive – itself a dirt and gravel road – during the relevant time period.³ Mr. Sahadi also claims that SJWC failed to maintain accurate maps of the location of its water main under Santella Drive, as allegedly required by GO 103-A.⁴

We have jurisdiction to adjudicate Mr. Sahadi’s complaints.

2. Factual Background

Mr. Sahadi is developing a five-lot residential housing subdivision on his property in Los Gatos, California. Discussions between Mr. Sahadi and SJWC began on October 1, 2018. At that meeting, Mr. Sahadi delivered to SJWC his design plan for finishing construction of Santella Drive including adding utility services underneath the road, grading the road, and surfacing it. The Town had

² Section 451 provides in pertinent parts that “All charges demanded or received by any public utility ... for any product or commodity ... or any service rendered ... shall be just and reasonable ... [and] [e]very public utility shall furnish and maintain such adequate ... equipment and facilities ... as are necessary to promote the safety, health, comfort and convenience of ... the public.”

³ GO 103-A, Paragraph III.3.A. provides that water mains “shall have no less than 30-inches of cover over the top of the pipe in streets ... except when it is necessary to avoid underground obstructions or rocky or hardpan conditions where such depth is not feasible.”

⁴ GO 103-A, Paragraph VII.4.B. provides that water system plans, maps, drawings, and other records “shall be updated as significant changes occur.”

previously approved of Mr. Sahadi's plans for Santella Drive.⁵ At the same meeting, SJWC delivered to Mr. Sahadi the "as built" plans for SJWC's pipeline beneath Santella Drive, which had been installed more than a decade earlier by a different developer and the ownership of the pipe subsequently transferred to SJWC.⁶

The plans that Mr. Sahadi delivered to SJWC lacked the data necessary to design adequate fire protection service for his housing project. Consequently, Mr. Sahadi's engineering firm undertook the task of developing sufficient data for SJWC to adapt its pipeline to provide adequate water flow for fire-fighting purposes. The missing data was delivered to SJWC on November 1, 2018. By November 19, 2018, SJWC's planning department had finished its work with the new data and passed its work product on to SJWC's engineering department for what was typically a 3-month process for SJWC to engineer the delivery of water service to a new housing development.⁷ The parties had been working harmoniously with one another up to this point.

The next day, November 20, 2018, an unnamed individual working directly for Mr. Sahadi, completely uncovered 70 feet of SJWC's main water pipe, while using power-driven, earthmoving equipment on Santella Drive.⁸ According to Mr. Sahadi's testimony, the operator of the equipment was doing

⁵ Exh. FS-1 (Sahadi), at 8, line 19 – at 9, line 1; *see also*, Exh. FS-5 (Town-approved plans).

⁶ Exh. SJWC-3 (Dunbar), at 7, line 24 – at 8, line 10; Exh. SJWC-10 (Dunbar) at 3, lines 2-6; Exh. SJWC-7. "As built" refers to plans showing how a pipeline was originally built. In this instance, the as built plans for SJWC's pipeline under Santella Drive were prepared during the period 2012 – 2014, Exh. SJW-7.

⁷ EH Tr. (Dunbar) at 204, line 4-17.

⁸ Mr. Sahadi does not dispute that he directed excavation of some sort should occur on Santella Drive. The name of the excavator was tentatively suggested by one of Mr. Sahadi's contractors during the evidentiary hearing. EH Tr. (Hunter) at 31, lines 6-9. However, Mr. Hunter's recollection of the excavator's name was too uncertain to publish in this decision.

what Mr. Sahadi told him to do, “scrape” the surface of Santella Drive in preparation for spreading gravel over it in anticipation of the winter rainy season.⁹ How far below the surface of Santella Drive the water pipe was located at the time the excavator uncovered it, how much earth the excavator removed and for what purpose is unknown because the excavator himself did not appear and testify, in writing or in-person, at the hearing. However, a picture of the uncovered portion of the pipe was admitted into evidence.¹⁰ It shows that the excavator did not stop excavating when he reached the standard, blue, plastic tape that acts as a warning to excavators that the top of a water pipe is merely six inches below the tape.¹¹ Nor did the excavator stop when he exposed the top of the pipe. Instead, he continued to excavate, down to a level below the pipe itself. There is no dispute that the diameter of the pipe, by itself, is 12-inches.¹² The parties also agree that on November 20, 2018 the excavator was already aware that there was a large water pipe beneath Santella Drive, because he had struck a valve on the same pipe with his power-driven equipment just a few weeks earlier, on October 27, causing a leak.¹³

Mr. Sahadi states that the excavator’s actions with respect to uncovering SJWC’s pipeline were “unauthorized.”¹⁴ That fact is indisputable because neither Mr. Sahadi nor the unidentified, non-appearing excavator nor any other contractor working on Mr. Sahadi’s housing development obtained a valid

⁹ EH Tr. (Sahadi) at 171, line 18 – at 172, line 4; at 187, lines 16-23.

¹⁰ Exh. FS - 8.

¹¹ *Ibid.*

¹² *See ibid.*

¹³ Exh. FS – 7.

¹⁴ Sahadi Opening Brief (OB) at 10 (“Later unauthorized excavation”).

Underground Service Alert (USA) ticket, as required by state statute, for the purpose of “scraping” Santella Drive or any other type of excavation of the roadway.¹⁵ Cal. Gov. Code section 4216, *et seq.* (the Locate Statute) forbids the use of any power-driven machinery to “scrape” or otherwise excavate a road known to have a live water pipeline beneath it, whether a USA ticket has been obtained or not, until after exploratory excavation has occurred, using only handheld tools, down to the water pipe.¹⁶ The statute has no exceptions. Hand-held excavation equipment is required no matter how deep or shallow a pipe is or is thought to be.¹⁷

¹⁵ “[A]n excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator’s intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation.” Cal. Gov. Code § 4216.2 (b). The term “excavation” includes “scraping” the earth’s surface as well as grading or digging. Cal. Government Code § 4216 (g). Another contractor for Mr. Sahadi had constructed a concrete retaining wall to hold back an uphill slope on one side of Santella Drive where the pipe was uncovered. *See* Exh. FS-8 (photograph); EH Tr. (Hunter) at 34, lines 12-24. This contractor, who disavowed any responsibility for hiring the unnamed excavator as a subcontractor (EH Tr. (Hunter) at 43, line 20 – at 44, line 5), did obtain a USA ticket for itself to build the retaining wall (Exh. FS-17 (Hunter) at 2, lines 3 – 5), but this ticket expired before October 27 (*id.* at 2, line – at 3, line 3), the day the unnamed excavator first hit SJWC’s pipeline with power-driven equipment, and well before 70 feet of the pipe was completely uncovered using power-driven equipment on November 20, 2018, *see* Exh. FS-8.

¹⁶ An “excavator shall determine the exact location of the subsurface installations in conflict with the excavation using hand tools before using any power-driven excavation or boring equipment within the tolerance zone of the subsurface installations.” Cal. Government Code § 4216.4 (a). Mr. Sahadi presumes that SJWC’s pipeline was dangerously close to the surface of Santella Drive prior to its being “scraped” but no eyewitness to the “scraping” operations on either October 27 or November 20 appeared and testified to that effect.

¹⁷ Mr. Sahadi maintains that, prior to November 20, 2018, he thought the pipeline was 36 inches or more beneath the surface of Santella Drive due to the “as-built” documents he was given by SJWC on October 1, 2018. *See* Exh. FS-1 (Sahadi) at 5, line 6 – at 6, line 16. He also testified that a person, whose name he could not recall, but whom he presumed was an employee of SJWC, appeared one day at the housing project and stated that SJWC’s pipeline was 36 inches or more below the road grade throughout the entire 220-foot length of pipe relevant here. Exh. FS-1 (Sahadi) at 3, lines 1 – 4; at 9, lines 18 – 20. This hearsay statement attributed to an unnamed individual on an unspecified day, cannot be subjected to cross-examination and thus is being

Footnote continued on next page.

SJWC witness Dunbar testified that the 70 feet of exposed pipeline alarmed SJWC personnel. She explained that “exposure of 70 feet of the line created an even more serious hazard” than the previous contact with the pipe a month earlier. Ms. Dunbar stated that exposure of so much of the pipe created such a sense of urgency that SJWC personnel working on the project immediately stopped all they were doing to devote attention to finding an immediate remedy.¹⁸ Ms. Dunbar testified further that the uncovered pipe was much more vulnerable to damage from a passing car or mechanized construction equipment than when it was covered, to whatever extent it was covered, prior to being exposed.¹⁹ Consequently, a week after Mr. Sahadi’s excavator uncovered the pipeline, on or about November 27, 2018, SJWC asked the Town to issue a stop-work order to Mr. Sahadi. The Town did so immediately, but, without notice to SJWC, the Town made its stop-work order applicable to both Mr. Sahadi’s work on Santella Drive itself and his work on the housing project.²⁰ No Town employee or official testified either in writing or at the hearing as to the Town’s reasoning for ordering Mr. Sahadi to stop working on the houses.

accorded little evidentiary weight. Even if completely accurate, it does not excuse Mr. Sahadi and his excavator from following the provisions of the Locate Statue.

¹⁸ Exh. SJW-10 (Dunbar) at 4, lines 15 – 23; EH Tr. (Dunbar) at 207, lines 7 – 17 (“Q. [by SJWC’s counsel] [A]ddressing the exposure of the pipe, was there a sense of urgency about relocation of the pipeline? A. Absolutely. ... [W]e stopped what we were doing and focus[ed] entirely on that”).

¹⁹ See EH Tr. (Dunbar) at 205, lines 2 – 5.

²⁰ Ms. Dunbar, the SJWC employee who requested the stop work order, testified in this proceeding that she never asked the Town to issue a stop work order covering work on more than Santella Drive itself because the protection of the pipeline was all that was ever of concern to SJWC. EH Tr. (Dunbar) at 206, lines 6 - 8. Her further uncontradicted testimony was that she was never informed by Mr. Sahadi or anyone acting on his behalf or any Town official that the stop work order extended to construction activity on the houses themselves, until much later, April 16, 2019. EH Tr. (Dunbar) at 206, lines 12 - 22.

Mr. Sahadi was upset by the fact that the stop-work order forbade him to continue construction work on the houses as well as Santella Drive.²¹

Notwithstanding the circumstances described above, during the period November 20, 2018 through April 16, 2019, SJWC and Mr. Sahadi continued their efforts to adapt the existing pipeline to serve the needs of Mr. Sahadi's housing development. Because SJWC wanted to protect the exposed pipeline as quickly as possible, SJWC speeded up completion of its engineering work for re-positioning 335 feet of the pipeline, comprised of the 70 feet of exposed pipeline and another 265 feet of covered pipe SJWC anticipated would need repositioning to accommodate Mr. Sahadi's plans for further work on and under Santella Drive.²² To expedite covering the 70 feet of exposed pipe as quickly as possible, SJWC decided to obtain a single-source price quote for relocating all 335 feet of pipe.²³ The price quoted to SJWC on December 7, 2018 and immediately shared with Mr. Sahadi, totaled \$284,740.²⁴

Mr. Sahadi refused to accept any responsibility for the \$284,740 price, on the grounds that it was more work than was necessary for his purposes and it

²¹ Mr. Sahadi testified "the stop work notice was grossly excessive, and [caused] the delay in my ability to pursue construction of my development ... [which] was extremely costly" and he accused SJWC of "us[ing] the stop notice as leverage in an attempt to force me into paying for work ... which was not my responsibility." Exh. FS - 1 at 3, line 26 - at 4, line 13. However, he did not inform SJWC of the extent of the stop-work order until April 16, 2019, at which time Ms. Dunbar immediately contacted a Town official and explained that SJWC had never requested that work should be stopped on construction of the actual residences, just the work that Mr. Sahadi was intending to do on Santella Drive itself. EH Tr. (Dunbar) at 205, line 18 - at 206, line 5. After all the work on repositioning 220 feet of the pipeline was completed in May 2019, the Town did rescind its order, allowing Mr. Sahadi to work on the houses, *id.* at 206, lines 12 - 28, and resume work on Santella Drive, *id.* at 206, line 23 - at 207, line 6.

²² See EH Tr. (Dunbar) at 207, lines 13 - 25.

²³ *Id.* at 207, line - at 208, line 3.

²⁴ Exh. SJW-3 at 5, lines 3 - 7.

was the product of single-source pricing. Instead, through his engineer for the project, he arranged for workers, using hand-held tools this time, to dig holes down to the pipe along the 335-foot length SJWC had identified for relocation.²⁵ This effort established that more than 100 feet of the 335-foot length of pipe identified by SJWC for repositioning was both located at a legally-compliant depth below the future paved surface of Santella Drive and needed no repositioning at all.²⁶ SJWC used that new information to estimate what a revised bid from the single-source supplier would likely be. SJWC estimated that the single-source supplier would revise its bid down to \$193,530, a savings of nearly \$100,000 from the \$284,740 quotation.²⁷ However, Mr. Sahadi again refused to accept responsibility for any part of the \$193,530.²⁸ Instead, he made a counterproposal.²⁹ He offered to deliver \$193,530 to SJWC immediately, but only on the condition that SJWC agree to allow him to contest that amount in a forum of his choice.³⁰ SJWC rejected Mr. Sahadi's counterproposal on the ground that it would violate specific terms in its tariff for how to resolve disputes of this nature.³¹

²⁵ Exh. SJW-10 (Dunbar) at 6, line 17 – at 7, line 5 (“[A]t a December 26, 2018 meeting that I attended ... Mr. Wilson [Mr. Sahadi's engineer] offered to ‘pothole’ the pipeline route.”).

²⁶ Ex. SJW-3 (Dunbar) at 5, lines 14 – 18 (“Receipt of potholing data from Mr. Sahadi's contractor ... enabled San Jose Water to reduce the extent of pipeline required to be relocated.”); Exh. SJW-10 (Dunbar) at 5, lines 6 – 8 (“[Potholing data] enabled San Jose water to reduce the relocation footage from 335 to 220 feet, reducing the indicated cost to \$193,530.”).

²⁷ *Ibid.*

²⁸ EH Tr. (Dunbar) at 209, line 21 – at 210, line 10.

²⁹ Exh. FS-1 (Sahadi) at 15, lines 1 – 13).

³⁰ *Ibid.*

³¹ EH Tr. (Dunbar) at 210, lines 6 – 17.

Since no construction work was being carried on by Mr. Sahadi due to the stop-work order, and the road was blocked to all vehicular traffic, SJWC was comfortable leaving the 70 feet of pipeline exposed awhile longer, before recovering or lowering it to the legally required depth.³² Accordingly, SJWC began working directly with Mr. Sahadi's engineer and started a more typical competitive bidding process for repositioning the 70 feet of exposed pipe below the eventual paved surface of Santella Drive, plus repositioning another 150 feet of the pipeline (total of 220 feet).³³ By March 19, 2019, a competitive bidding process produced a low bid of \$161,760, substantially lower than both the original, single-source quote (\$284,740) and SJWC's estimated, single-source price for relocating a shorter length of pipe (\$193,530). Nonetheless, Mr. Sahadi refused to take any responsibility for any of the \$161,760 competitive bid.³⁴ SJWC, however, accepted the winning bid and the necessary work was completed a few weeks later, on May 2, 2019. The contractor's final invoice amounted to \$158,245, even lower than its original bid of \$161,760. Accordingly, on May 14, 2019, SJWC presented Mr. Sahadi with an invoice for \$158,245.³⁵ As noted above, Mr. Sahadi seeks credits in exactly that amount, \$158,245, to offset SJWC's entire invoice.

³² *Id.* at 209, lines 6 – 15 (“We recognized ... the danger was not imminent.”); SJW OB at 17, (“[T]he immediate risk of damage to the 70 feet of exposed 12-inch main was alleviated.”).

³³ *Id.* at 209, lines 15 – 20.

³⁴ Exh. SJW-3 (Dunbar) at 5, line 22 – at 6, line 5.

³⁵ *Ibid.*

3. Burden of Proof

California law has long held that the party bringing a claim has the burden of proving that claim.³⁶ The Commission follows this rule in complaint cases brought to it.³⁷ This means that Mr. Sahadi has the burden to prove by a preponderance of the evidence (50.1 percent or more) that his allegations are true.

4. Issues Before the Commission

The issues to be determined are:

- A. What do GO 103-A and section 451 require SJWC to do to accommodate Mr. Sahadi's plans for his residential development adjacent to a street under which SJWC's water main is located?
- B. Did SJWC fail to fulfill any obligation it owed Mr. Sahadi under GO 103-A or section 451?
- C. If so, what is the proper remedy?

GO 103-A provides guidance for what water utilities must do with respect to the initial installation of water pipelines. As explained in notes 3 and 4, above, GO 103-A, Paragraph III.3.A requires that SJWC's water pipelines "shall have no less than 30-inches of cover over the top of the pipe in public streets." And, GO 103-A, Paragraph VII.4.B. requires SJWC's plans, maps, drawings and other records "shall be updated as significant changes occur" without specifying whether SJWC must actively pursue knowledge of changes that may have

³⁶ Cal. Evid. Code section 500 (2008). See *Sargent Fletcher Inc. v. Able Corp.* (2003) 110 Cal. App. 4th 1658, 1667.

³⁷ See *In Complaint of Service-All-Tech, Inc. v. PT&T Co.* (Cal. PUC, 1977) 83 CPUC 135, Decision 88223 (Commission held that complainant's "failure to present any evidence present[ed] a total lack of meeting [its] burden"). See also *Pacific Bell Telephone Company d/b/a AT&T California v. Phones4All Corporation* (Cal. PUC, 2008) Decision 08-04-043, 2008 Cal. PUC LEXIS 132.

occurred to the original depth of the cover material, by unauthorized human intervention or natural subsidence, before a duty to update its documentation arises. Section 451 is also relevant and requires SJWC to furnish and maintain “adequate, efficient, just and reasonable ... equipment, and facilities.”

5. Discussion and Resolution of Disputed Issues

We find that Mr. Sahadi, failed to prove by a preponderance of evidence that SJWC’s conduct during the relevant period with respect to its pipeline beneath Santella Drive violated GO 103-A or standards found in section 451 or any other section of the Public Utilities Code. The following portions of this decision examine SJWC’s conduct in detail and in chronological order.

5.1. No Breaches of Duty by SJWC Prior to October 1, 2018

Mr. Sahadi alleges that SJWC violated GO 103-A, Paragraph VII.4.B and section 451 either by failing to maintain and then deliver to him, on October 1, 2018, maps and drawings showing that there was less than 30 inches of cover over some portions of SJWC’s pipe under Santella Drive or by failing to maintain at least 30 inches of cover over the relevant portion of the pipeline, as the maps and drawings actually delivered to him on October 1, 2018 depicted, or by misleading him to believe that there was at least three, and possibly, five feet of cover over the entire pipeline prior to and including October 1, 2018. He contends these alleged lapses by SJWC caused his excavator to expose 70 feet of the pipeline while “scraping” Santella Drive,³⁸ which, in turn, caused Los Gatos

³⁸ The record reflects that SJWC gave the maps and drawings of its pipeline to Mr. Sahadi on October 1, 2018. However, there is no record evidence that the excavator himself, as distinct from Mr. Sahadi, saw any of SJWC’s maps and drawings. Likewise, there is no evidence that Mr. Sahadi or anyone else told the excavator that there was 36 inches of cover over the relevant

Footnote continued on next page.

officials to issue a stop-work order that prevented him from working on his housing project for several months and saddled him with higher project costs.³⁹

Mr. Sahadi maintains that the documents that were provided to him by SJWC on October 1, 2018, which show three feet of cover, or in some instances more, over the entire length of the pipeline, were misleading.⁴⁰ He also argues that it was SJWC's duty to monitor and record the depth of the pipeline for any significant changes from the day when SJWC first took ownership of the pipeline to October 1, 2018 when Mr. Sahadi began meeting with SJWC about his housing development. Alternatively, Mr. Sahadi argues that once he announced his intent to do construction work on and under Santella Drive in connection with his housing project, it was SJWC's duty to dig down to the pipe in several locations along the relevant portion of the pipe prior to the October 1, 2018 meeting to confirm that it was in fact covered to a depth of at least 30 inches.

Neither GO 103-A nor section 451 place upon a utility the burden of routinely inspecting all roads, streets, and highways in its service territory under which the utility has a pipeline or other facility for possible changes in the depth

portion of the pipeline. Evidence of the excavator's knowledge about the depth of cover over the pipeline up to and including November 20, 2018, was never introduced.

³⁹ Exh. FS-1 (Sahadi) at 2, line 1 – at 3, line 7; *id.* at 7, line 1 – at 8, line 2. There is no dispute that only Town officials could issue a stop-work order. There is no evidence in the record of SJWC attempting to mislead or tempt those officials to misuse their authority by issuing an unnecessary stop-work order to Mr. Sahadi.

⁴⁰ Mr. Sahadi also relies on the testimony of his contractor, Hunter, who stated that an unidentified individual, on an unspecified date prior to the October 1, 2018 meeting, appeared at the development site and told him (Hunter) that either the entire length of the pipeline or at least the relevant portion of it was located five feet beneath the surface of Santella Drive. EH Tr. (Hunter) at 42, lines 11-28. We give little evidentiary weight to such hearsay. At a minimum the speaker must be identified by name so that he might be called to testify about precisely what he did or did not say regarding the depth to which all, or the relevant portion, of the pipeline was buried; who he worked for; and, the basis of his knowledge about the depth of cover.

of cover. Furthermore, Mr. Sahadi's alternative argument that the same legal authorities require SJWC to dig down to its pipe, at its own expense, to confirm the exact depth of cover, every time a developer announces its intent to perform excavation activities over one of SJWC's pipes, is equally untenable. SJWC is not required to do so by either GO 103-A or section 451 or any other provision of the Public Utility Code.

If either of Mr. Sahadi's arguments were correct, it would entirely obviate the need for California's Locate Statute, *see* footnote 16, above. The Locate Statute, as opposed to GO 103-A or section 451, provides specific means for utilities with underground facilities to be notified that someone wishes to excavate the cover over their facilities. The Locate Statute also protects underground facilities from anyone prematurely deploying power-driven earthmoving equipment to remove the cover over, for example, a water pipeline, by requiring that all potential excavators first assess the existing depth of cover over an underground facility in the relevant work area using only handheld tools. Neither GO 103-A nor section 451 displace the provisions of the Locate Statute or excuse Mr. Sahadi and his contractors from their duty to comply with the provisions of the Locate Statute.⁴¹ The Commission cannot change the legislature's assignment of those specific obligations to the potential excavator as opposed to the utility.

⁴¹ The record is clear that Mr. Sahadi hired, compensated and had control over the activities of the unnamed excavator who struck SJWC's pipeline on October 27, 2018 and then exposed 70-feet of the same pipeline on November 20, 2018, without obtaining a valid locate ticket for either of the two instances of excavation activity and without first using handheld tools to locate the pipe rather than power-driven earthmoving equipment. EH Tr. (Hunter) at 43, line 21 – at 44, line 5.

In contrast to Mr. Sahadi and his contractor, who excavated Santella Drive without authority from the Locate Statute administrators, SJWC fulfilled all its statutory obligations. The evidence in this proceeding demonstrates that the original installation of the water pipeline under what would eventually be called Santella Drive was fully compliant with GO 103-A and section 451.⁴² The evidence shows that the pipeline was inspected by SJWC when it was installed and, in 2013, when SJWC took ownership and possession of the pipeline, it also took possession of all the original maps and documentation which showed that the pipeline had originally been covered to at least the legally required depth of 30 inches along its entire length.⁴³ Mr. Sahadi introduced no evidence that any of these documents were falsified.

Furthermore, Mr. Sahadi offered no evidence that SJWC, at any time during the October 1, 2018 meeting or thereafter, represented to him that the plans and drawings he was given on October 1, 2018, illustrated the then existing state of cover for the pipeline or the pipeline's exact location. Nor is there any evidence that an SJWC representative told Mr. Sahadi that he could ignore the provisions of the Locate Statute; "scrape" Santella Drive with power-driven, earthmoving equipment without obtaining official permission to do so; or, ignore the requirement to use only handheld equipment to confirm the actual depth of cover over SJWC's pipe before introducing power-driven, earthmoving

⁴² SJWC observed that the pipe was covered to a depth of at least 30 inches along its existing length in 2008 and its additional length in 2013. *See* EH Tr. (Dunbar) at 228, line 7 – at 232, line 8.

⁴³ *See* Exh. SJW-3 (Dunbar) at 7, line 21 – at 8, line 10; Exh. SJW-10 (Dunbar) at 2, line 24 – at 3, line 27; EH Tr. (Dunbar) at 228, line 3 – at 232, line 8.

equipment.⁴⁴ Mr. Sahadi maintains that he did not authorize his excavator to engage in such activities, but, more to the point, neither did he ensure that his excavator was acting in compliance with the provisions of the Locate Statute and thus, the burden of the outcome falls on Mr. Sahadi, not SJWC.

The as-built documentation SJWC provided to Mr. Sahadi on October 1, 2018 depicted, with reasonable accuracy, the amount of cover when the pipeline was installed in 2008 to accommodate an earlier development on Santella Drive and nothing more than that.⁴⁵ California's Locate Statute is the relevant and the applicable legal authority. It makes clear that a developer, rather than the utility, bears the responsibility to determine the existing amount of cover, regardless of the original depth of cover, in accordance with the provisions of the statute. If the depth of cover changed, due to natural causes or human intervention, after the as-built drawings were created, it was not SJWC's duty to discover that fact. It was only SJWC's duty to change its maps and documents once it knew about a change and there was no evidence that SJWC was aware of a change from the original depth of cover shown on its maps. Accordingly, on October 1, 2018, SJWC was in full compliance with all obligations it owed Mr. Sahadi respecting information about the depth of its pipeline beneath Santella Drive. There is no record evidence of a failure by SJWC to fulfill its duties to either Mr. Sahadi or the public during this period.

⁴⁴ As indicated in note 40, above, Mr. Sahadi's offer of hearsay evidence to the effect that an unnamed individual allegedly appeared on Santella Drive before any "scrapping" was undertaken and told his construction manager that the entire SJWC pipeline under Santella Drive where Mr. Sahadi's project was located had 30 inches of cover over it, is too untrustworthy to carry Mr. Sahadi's burden of proof.

⁴⁵ See SJW OB at 10 -11, footnotes 22-24 and testimony cited therein. The as-built documentation was assembled in 2012-2014. (See note 6, above.)

**5.2. No Breaches of Duty by SJWC
October 1 – November 19, 2018**

SJWC's witness Dunbar represented SJWC at the October 1 meeting. She testified that the main thrust of that meeting was to discuss generally an extension of water service to Mr. Sahadi's proposed development and specifically the water flow requirements needed to support private fire service within the development.⁴⁶ She informed Mr. Sahadi that once his engineer provided her with detailed data, SJWC's "standard" three-month long engineering process would begin.⁴⁷

Mr. Sahadi's engineer provided the water flow data for firefighting a month later, on November 1, 2018.⁴⁸ SJWC's planning department worked with that data to develop a plan for the extension of service to Mr. Sahadi. That effort was completed in approximately three weeks.⁴⁹ On November 19, 2018, a plan, based on the new data, was sent to SJWC's engineering department,⁵⁰ which, according to the timetable Ms. Dunbar gave Mr. Sahadi, would not be completed for another three months,⁵¹ approximately mid-February 2019.

During this period of time, specifically, on October 27, 2018, Mr. Sahadi's excavator struck a water valve on SJWC's pipeline while using power-driven, earthmoving equipment, causing a leak and electrical damage to a nearby SJWC control center and completely disabling a water storage tank to which the

⁴⁶ EH Tr. (Dunbar) at 208, lines 14 -28.

⁴⁷ *Id.* at 204, lines 4 -17.

⁴⁸ *Id.* at 204, lines 10-12.

⁴⁹ *Id.* at 205, lines 14-17.

⁵⁰ *Ibid.*

⁵¹ *Id.* at 203, line 15 – at 204, line 17.

pipeline was connected requiring emergency repair action.⁵² SJWC promptly inspected the leak and, without further ado, repaired all the damage at its own expense.⁵³

Mr. Sahadi contends that this incident put SJWC on notice that the relevant portion of the pipeline had less than six, instead of 30, inches of cover over it. However, the depth of cover over the water valve before it was struck is not ascertainable with any degree of certainty from the record of this proceeding. The only eyewitness, Mr. Sahadi's excavator, did not testify at the evidentiary hearing. And a photograph,⁵⁴ taken by another of Mr. Sahadi's contractors after the valve was struck, is not conclusive evidence, one way or the other as to the depth of cover over the pipe prior to Mr. Sahadi's excavation activity.

Mr. Sahadi would have us find that since he, according to him alone, told his excavator merely to "scrape" six inches of dirt from the relevant portion of Santella Drive, his excavator must have followed his directions on October 27 and thus we should conclude that there was only six inches or less of cover over SJWC's pipe when Mr. Sahadi's excavator struck it on October 27. But Mr. Sahadi's argument is undermined by a second photograph⁵⁵ he offered into evidence, depicting what the same excavator did, without any evidence of a change of directions from Mr. Sahadi, three weeks later. He dug, not scraped, down and under a 70-foot length of the 12-inch diameter pipeline itself. Mr. Sahadi offers no explanation of why his excavator would allegedly follow

⁵² Exh. SJW-10 (Dunbar) at 4, lines 11 – 15.

⁵³ SJW OB at 5 ("... [SJWC] repaired the leak ... and the Maintenance Department decided not to bill Mr. Sahadi for their work").

⁵⁴ Exh. FS-7. The photo was admitted into evidence without objection.

⁵⁵ Exh. FS-8. The photo was admitted into evidence without objection.

Mr. Sahadi's direction and remove only six inches of cover on one day (October 27), then completely ignore Mr. Sahadi's direction to scrape no more than six inches deep, on another day (November 20). It is just as plausible that his excavator never understood Mr. Sahadi's "scraping" instruction to begin with, or that he never heard such an instruction. With the state of the record the way it is, we cannot conclude that the excavator heard and followed a direction to scrape only six inches from Santella Drive on October 27, but then ignored the same direction on November 20. Mr. Sahadi has made no effort to explain how this could happen. Accordingly, we reject Mr. Sahadi's invitation to find that SJWC was aware that its pipeline was six inches or less below grade because of the events on October 27. We remain unconvinced that Mr. Sahadi's excavator heard, understood, and followed directions to scrape no more than six inches from the surface of Santella Drive on either occasion.

No other evidence was introduced by Mr. Sahadi that Ms. Dunbar or any other SJWC employee working on adapting the pipeline to his housing project was aware or should have been aware that any part of the pipeline was less than 30 inches below the surface of Santella Drive. The fact that some previous service connections were indicated on some maps to be deeper than 30 inches below road grade, does not prove that SJWC knew or should have known that other parts of the main pipeline were less than 30-inches deep. It is entirely speculative to assume that the deeper cover over some portions of the pipeline was created by removing cover from other portions of the pipeline, leaving the latter portions with insufficient cover. No evidence was presented that a previous contractor shifted cover from one portion of the pipeline to the other. Mr. Sahadi's speculation that something like that occurred is not an adequate substitute for evidence.

Accordingly, we find no evidence in the record of any unacceptable conduct or failure to fulfill a duty by SJWC during the period October 1 – November 19, 2018.

**5.3. No Breaches of Duty by SJWC
November 20, 2018 – March 19, 2019**

Mr. Sahadi points to several incidents during this four-month period which he claims delayed his housing project and caused him financial damage. He blames SJWC for all of them. We disagree.

**5.3.1. A Town Order Stopped All Work on
Mr. Sahadi's Project**

On November 20, 2018, Mr. Sahadi's excavator unearthed 70 feet of SJWC's pipeline using heavy earthmoving equipment on Santella Drive. As indicated in the previous section, Mr. Sahadi's excavator never obtained a valid USA Locate ticket, as required by the Locate Statute, and he used power-driven, earthmoving equipment forbidden by the Locate Statute, apparently without first digging down to the pipe with handheld tools to ascertain its true depth. The record shows that SJWC's response was two-fold. SJWC sought to protect the pipe itself from further injury by first requesting Mr. Sahadi to either cover the pipe to its prior depth or erect a concrete barrier alongside the exposed pipe in order to minimize the risk of any construction vehicle contacting it and doing further damage. Mr. Sahadi admits he refused to do either.⁵⁶ Due to Mr. Sahadi's refusal, SJWC implemented an alternative plan to protect its exposed pipe.

On November 28, 2019, SJWC requested Los Gatos to issue a stop-work order to Mr. Sahadi preventing him from doing any further work on Santella

⁵⁶ Exh. FS-1 (Sahadi) at 12, lines 6-16.

Drive.⁵⁷ In response, the Town issued an order for Mr. Sahadi to stop work on all aspects of his project, both Santella Drive and the individual houses.⁵⁸ With the pipe protected from any further exposure to Mr. Sahadi's construction activities by that part of the Town order prohibiting work on Santella Drive, SJWC began developing plans to relocate the 70-feet of exposed pipe underground as well as relocate any portion of another 265 feet of the pipe deeper if it was not already at least 30-inches deep and laterally, if necessary, to avoid interfering with Mr. Sahadi's eventual resumption of work on Santella Drive.⁵⁹

We find these steps were reasonable mitigation efforts by SJWC. Mr. Sahadi has no basis for complaining about Town officials issuing an order that stopped him from doing work on Santella Drive. Before SJWC requested a stop-work order from the Town, it offered Mr. Sahadi an opportunity to protect the exposed pipe in ways that would have allowed him to continue with his work on Santella Drive. He chose not to accept SJWC's proposals.

It is Mr. Sahadi's contention that he could have been working on the houses during the four-month period November 20 – March 19, and that the only reason he was barred from working on his houses was because the breadth of the stop-work order barred him from doing so. Although there is no dispute between the parties that the scope of the stop-work order was overbroad and it prevented Mr. Sahadi from working on individual houses in his project, there is no evidence that the Town ordered Mr. Sahadi to stop construction work on the houses at the request of SJWC. No official of the Town testified in this proceeding. Thus, the Town's reason for making its stop-work order broad

⁵⁷ Exh. SJW-10 (Dunbar) at 6, lines 5 – 16.

⁵⁸ Exh. FS – 1 (Sahadi) at 3, lines 23 – 25

⁵⁹ Exh. SJW-3 (Dunbar) at 5, lines 3 – 7.

enough to stop Mr. Sahadi's work on the houses was never established.

Mr. Sahadi attributes the scope of the order to SJWC, but his attribution is mere speculation without evidence to support it.⁶⁰ Furthermore, there is directly contrary testimony in the record from SJWC witness Dunbar, who explained that she neither asked, nor intended, for the town to stop Mr. Sahadi from working on his houses.⁶¹ The record shows that on the day she learned of the actual scope of the Town's order, about four months after the stop-work order was issued, she contacted Town officials and explained that SJWC never wanted, nor asked, the Town to stop Mr. Sahadi from working on his houses. Soon after Ms. Dunbar's communication, the Town rescinded the stop-work order.⁶²

Because no Town official testified about the reason for the broad scope of the initial stop-work order, and SJWC witness Dunbar testified that she neither asked, nor intended, for the Town to stop Mr. Sahadi from working on his houses,⁶³ we will not hold SJWC responsible for the overbreadth of the stop-work order or its financial effects on Mr. Sahadi. There is simply no reliable record evidence that either SJWC intended to prevent Mr. Sahadi from working on his houses or that SJWC asked the Town to prevent Mr. Sahadi from working on his houses.

⁶⁰ Exh. FS -1 (Sahadi) at 3, lines 23 – 25 (“... the Water Company nevertheless induced the Town of Los Gatos to issue a stop work notice, not just on the affected area of Santella Drive, but on my entire 13-acre property”).

⁶¹ Exh. SJW-10 (Dunbar) at 6, lines 5 – 16.

⁶² EH Tr. (Dunbar) at 206, lines 9 – 28; *see also* Exh. SJW-10 (Dunbar) at 6, lines 1 – 16.

⁶³ Exh. SJW-10 (Dunbar) at 6, lines 5 – 16.

5.3.2. None of SJWC's Cost Solicitation Efforts Were a Breach of Duty

When, in November 2018, Mr. Sahadi refused to protect the 70-foot length of exposed pipe as SJWC wanted, SJWC immediately started planning for how it could secure protection for the pipe. SJWC's initial plan was to ask a single, trusted contractor to render a price estimate for repositioning 335 feet of the pipe, including new cover for the exposed 70-foot portion of the pipe and repositioning those portions of the remaining 265 feet of the pipe to accommodate Mr. Sahadi's plans for Santella Drive. The contractor responded with an estimate of \$284,740.⁶⁴

That initial cost estimate was obtained by SJWC on December 7, 2018 and immediately transmitted to Mr. Sahadi, who rejected it. Mr. Sahadi argues that obtaining this price estimate was a needless delay that cost him money by preventing him from moving his project forward on schedule.⁶⁵ He claims SJWC should never have invited a single contractor to provide an estimate on such work, both because the process lacked the necessary element of competition and because the scope of the work was unnecessarily large. Mr. Sahadi argues that his position is supported by the uncontested fact that SJWC later reduced the scope of the work down from repositioning 335 feet of pipe to repositioning only 225 feet of pipe and then putting the reduced scope of work out for competitive bidding, which resulted in a significantly lower price. This latter course of conduct by SJWC, according to Mr. Sahadi, had it been followed initially, would

⁶⁴ Exh. SJW-3 (Dunbar) at 5, lines 3 – 7.

⁶⁵ See Exh. FS-1 (Sahadi) at 13, lines 12 – 15 (cost estimate of \$284,740 was “completely unreasonable”).

have avoided delaying his project.⁶⁶ However, his argument is, again, a one-sided view of the record evidence.

Because Mr. Sahadi refused to protect the portion of the pipe his excavator unlawfully exposed exactly as requested by SJWC, SJWC had no choice but to do the work itself. We will not hold SJWC in breach of any duty to Mr. Sahadi for developing a plan that at its core involved remediating the dangerous condition Mr. Sahadi himself created. SJWC sought a single-source quotation given the urgency associated with 70 feet of its live pipeline having been exposed by the unauthorized conduct of Mr. Sahadi's excavator, followed by Mr. Sahadi's refusal to do what SJWC asked him to do to protect the exposed pipe. Under those circumstances, we find no fault with SJWC's efforts to obtain a single source quotation to relocate the exposed portion of the pipe.

Nor do we find fault with SJWC for including in its single source solicitation, repositioning work on another 265 feet of pipe, to accommodate Mr. Sahadi's plans for Santella Drive. It was Mr. Sahadi's responsibility to conduct exploratory potholing along the portion of Santella Drive he planned to regrade and to which he planned to add a sewer line.⁶⁷ However, Mr. Sahadi initially refused to do any potholing work along Santella Drive, leaving it to SJWC to estimate the extent of work needed to accommodate Mr. Sahadi's development plans.⁶⁸

⁶⁶ See Sahadi Reply Brief at 16, section III. D.

⁶⁷ Exh. SJW-10 (Dunbar) at 7, lines 2 – 5.

⁶⁸ The 335 feet of pipeline selected by SJWC for the single-source estimation was based on a plan diagram (Exh. SJW-5 which is identical to Exh. FS-5) Mr. Sahadi gave SJWC at the October 1, 2018 meeting that indicated Mr. Sahadi wanted 310 feet of the pipeline repositioned. EH Tr. (Dunbar) at 207, line 7 – at 208, line 28.

The record shows that on December 26, 2018, Mr. Sahadi's engineer agreed to use hand tools to ascertain all relevant locations where the pipe was, or would be after Mr. Sahadi graded Santella Drive, less than the 30 inches below the road surface.⁶⁹ The pothole data was provided to SJWC two days later, December 28, 2018.⁷⁰ That data allowed SJWC to reduce the maximum length of pipe that needed repositioning from the original estimate of 335 to 220 feet.⁷¹ It also lowered the cost of the work, again based on the single-source quote, from \$284,740 to \$193,530, which SJWC conveyed to Mr. Sahadi on January 23, 2019.⁷² We find that no breach of duty by SJWC occurred because SJWC initially estimated the scope of work at 335 feet rather than 220 feet. The initial estimate was reasonable in the absence of pothole data from Mr. Sahadi.

Mr. Sahadi again refused to bear responsibility for any part of the new \$193,530 estimate. Instead, Mr. Sahadi made a counterproposal. SJWC rejected his counterproposal. Mr. Sahadi argues that SJWC had no basis for rejecting his counterproposal; that accepting it would have kept him on pace with his development project, and therefore, SJWC was in violation of GO 103-A and section 451 for rejecting his counterproposal.

According to Mr. Sahadi's counterproposal, he would deposit \$193,530 with SJWC immediately, but simultaneously pursue recovery of some or all of it on the ground that SJWC was in violation of GO 103-A and/or section 451, as described above. However, SJWC's tariff contains a specific provision for

⁶⁹ Exh. SJW-10 (Dunbar) at 5, lines 4 – 6 (“At the December 26[, 2018] meeting, Mr. Wilson offered to ‘pothole’ the pipeline route, a standard procedure that typically is performed at the developer’s expense.”)

⁷⁰ Exh. SJW-10 (Dunbar) at 8, lines 19 – 22.

⁷¹ *Id.*, at lines 2 – 6.

⁷² EH Tr. (Dunbar) at 235, lines 18 – 22.

resolving disputes between SJWC and its customers. This tariff provision does not include any procedure like Mr. Sahadi's counterproposal. We will not find SJWC in violation of GO 103-A or section 451 for adhering to provisions in its tariff. The evidence portrays a utility doing exactly what it is obliged to do, rather than ignoring its obligations. The fact that a utility will not make an exception to its tariff to suit a single customer's convenience is not grounds for us to find the utility in breach of its duties under GO 103-A or section 451.

Beginning on December 26, 2018, SJWC also began working with Mr. Sahadi's engineering firm to organize a formal, competitive, bidding process for repositioning both the exposed portion of the pipe and any other portions of the pipe already underground that needed further repositioning to accommodate Mr. Sahadi's plans. SJWC put that reduced scope of work (220 feet) out for bid to five contractors. The winning bid from this process amounted to \$161,760, which was provided to Mr. Sahadi on March 19, 2019. At that time, the Town's stop-work order was still in effect and would remain in effect for a full month more.

Mr. Sahadi refused to pay the \$161,760 bid price, or any portion of it, notwithstanding the fact that it was the product of the kind of formal, competitive, bid process he had been demanding SJWC follow and the scope of work had been reduced from 335 feet to 220 feet, also as he had been demanding. This time Mr. Sahadi complained that the scope of work should have been reduced even further, from 220 to 150 feet or less, because concrete "caps" could be poured over certain sections of the 150 feet in lieu of lowering those sections of pipe to 30 inches or more below the surface of Santella Drive.

SJWC rejected Mr. Sahadi's "concrete caps" proposal because GO 103-A specifies exactly when concrete caps can be used in lieu of 30-inches of cover and

none of the specified conditions for doing so were met in the locations identified by Mr. Sahadi. Again, we will not find fault with a utility for following the provisions of our General Orders.⁷³

Thus, we find no evidence of any breach of duty by SJWC during any part of the four-month period from November 20, 2018 to March 19, 2019.

Furthermore, during this period a competitive bid process involving five bidders produced a fair price for the work to be done.

5.4. SJWC Fulfilled All Its Duties to Mr. Sahadi From March 20 to May 2, 2019

After Mr. Sahadi refused to bear responsibility for any of the \$161,760 bid, SJWC moved forward with the project and accepted the low bid. In reaction to SJWC's decision to proceed with the relocation without his approval, Mr. Sahadi filed the complaint in this proceeding on April 5, 2019.⁷⁴

To quote Mr. Sahadi, after the winning contractor started repositioning the pipe, "work did, in general, go smoothly." Not entirely, however.⁷⁵ Mr. Sahadi faults the work by the winning contractor on two grounds. First, Mr. Sahadi

⁷³ Mr. Sahadi and his engineers complain that SJWC never identified for them the specific language in GO 103-A setting forth the physical conditions when concrete caps can be used in lieu of cover. There is no requirement that a utility do so. Mr. Sahadi, his engineers, and lawyers are highly sophisticated professionals. This dispute does not involve residential customers acting *pro se*, a circumstance where a utility may be required to provide more detailed explanations.

⁷⁴ In his post-hearing Opening Brief, Mr. Sahadi states that he filed the complaint "[a]s a consequence" of SJWC's refusal to ask the Commission for an exception to the tariff provision that barred SJWC from accepting Mr. Sahadi's counterproposal to deposit \$193,530 with SJWC while pursuing his legal remedies against SJWC. Sahadi OB at 21.

⁷⁵ The intemperate aspersions cast by both parties on the integrity and professionalism of specific individuals employed by or associated with the opposing party are not useful for resolution of this dispute. Though sprinkled throughout the post-hearing briefs, they peak in the parties' respective discussions related to the March through May 2019 timeframe, which is why our observation is being made here.

claims the contractor left an unreasonable amount of “spoils” in the roadway after relocating the pipe, specifically 220 cubic yards of excavation material, which Mr. Sahadi implies he himself was forced to remove, although he offered no photographs, measurements or invoices for removal of that quantity of material.⁷⁶ Nor did he offer objective evidence to support his estimate of the amount of spoils. In contrast, an SJWC engineer testified that the entire project itself did not involve moving 220 cubic yards of material.⁷⁷ The SJWC engineer testified that the entire project involved only 80 cubic yards of spoiled material and all the actual spoils were accounted for as removed from the site by receipts from the company hired to haul them away.⁷⁸ We accept his analysis and reject the personal opinion offered by Mr. Sahadi.

Mr. Sahadi’s second complaint regarding the work done by the winning contractor is that a portion of the pipe that was replaced with new pipe was not removed from beneath Santella Drive, and instead, was abandoned in place. It is general knowledge that this is a common practice by water utilities throughout the country. Citing to a construction note on an early version of his plan for Santella Drive,⁷⁹ Mr. Sahadi claims that SJWC should have removed the old pipe completely.⁸⁰ He further alleges that conflicts with SJWC’s abandoned-in-place water pipe and his own, new sewer pipe caused delay and added cost to his project. Assuming there were conflicts between the two pipes, the final plan that Mr. Sahadi himself approved for construction purposes contained no notes

⁷⁶ FS Exh. -1 at 18, line 25 – at 19, line 4; *see also id.* at 4, lines 17-22.

⁷⁷ Exh. SJWC-12 (Nugteren), at 3, lines 16-21.

⁷⁸ *Id.*, at 3, line 22 – at 4, line 14.

⁷⁹ Exh. FS-5; note C3.

⁸⁰ Exh. FS-1 (Sahadi) at 17, lines 26-27.

calling for the removal of the old, abandoned pipe from the site.⁸¹ Accordingly, neither SJWC nor its contractor will be faulted by us for following the final plan and abandoning a portion of the pipe in place.⁸² Furthermore, Mr. Sahadi's complaints about the added cost of constructing a manhole to his new sewer line due to an alleged, physical conflict between the relocated water pipe and Mr. Sahadi's new sewer pipe, actually relate to an area that is not occupied by the relocated pipe at all.⁸³

6. Conclusion

Nothing in this record amounts to a violation by SJWC of the Public Utilities Code or our General Orders. SJWC's effort to obtain a competitive bid for repositioning 220 feet of its main pipeline under Santella Drive, including the 70 feet of exposed pipe, was accomplished in a reasonable amount of time, and carried out in a professional manner. Furthermore, SJWC retained a contracting company that completed the job for less than any of SJWC's prior estimates, less than four other competitive bidders, and even less than its own bid for the work. For all these reasons, no credits against the \$158,570 invoice will be awarded to Mr. Sahadi. No fines will be assessed against SJWC, and no orders will be issued to SJWC to change its managerial practices because at every step along the way SJWC adhered to the provisions of both GO 103-A and section 451, as well as to

⁸¹ Exh. FS-13. An earlier plan, Exh. FS-5, Mr. Sahadi submitted to SJWC on October 1, 2018, indicated removal of at least some of the vintage pipe ("C3. Remove and replace existing 12" waterline to meet minimum depth requirements by [SJWC]"). However, when given the final construction plans, Exh. FS-13, in 2020 for his comment and approval, Mr. Sahadi either intentionally or by his own error failed to insist that the plan include removal of some or all the vintage pipe. *See* Exh. SWJ-12 (Nugteren) at 2, line 24 – at 3, line 13.

⁸² A dispute about construction of a manhole in an area outside the pipe repositioning project is not within the scope of this proceeding.

⁸³ Ms. Dunbar demonstrated on the witness stand that the relocated water pipe and new sewer line do not cross at all. EH Tr. (Dunbar) at 213, lines 24 – 28.

its own tariff. The same cannot be said for Mr. Sahadi's excavator. The lesson to be learned from this proceeding is that water utilities are not required continually to seek contemporary knowledge of possible changes in the depth of cover over every foot of their underground facilities. Nor are water utilities obligated to undertake potholing to determine the cover over an existing pipeline beneath a street whenever a contractor proposes to excavate the street. The legislature enacted the Locate Statute to alleviate the problems associated with natural subsidence and unauthorized excavation affecting a utility's underground facility. The legislature solved the problems associated with natural subsidence and unauthorized excavation by placing on potential excavators responsibility for careful exploration of a proposed excavation sites with handheld tools and prior notice to the utilities.

7. Assignment of Proceeding

Commissioner Darcie L. Houck is the assigned Commissioner and Charles Ferguson is the Presiding Officer and assigned ALJ in this proceeding.

Findings of Fact

1. At a meeting on October 1, 2018, documents were exchanged by the parties. Mr. Sahadi delivered to SJWC his plans for work he intended to perform under and on Santella Drive. SJWC delivered to Mr. Sahadi its historic documents related to the installation of its pipeline beneath Santella Drive.
2. The documentation SJWC gave Mr. Sahadi on October 1, 2018 concerning the location and depth of cover over SJWC's pipeline was accurate, to the best of SJWC's knowledge, when the documentation was assembled in 2012- 2014.
3. The record contains no evidence that SJWC had actual knowledge on or before October 1, 2018 that any portion of the pipeline had less than 30 inches of cover over it.

4. The fact that on October 1, 2018, one portion of the pipeline had significantly more than 30 inches of cover over it, does not establish that SJWC should have presumed that the additional depth of cover over the pipeline was added at the expense of removing cover from elsewhere along the pipeline, and thereby caused the cover over the latter portion of the pipeline to be less than 30 inches.

5. If there was any delay in Mr. Sahadi's planned work on Santella Drive before November 1, 2018, it was due solely to Mr. Sahadi's failure to provide necessary water flow data to SJWC.

6. On October 27, 2018, Mr. Sahadi's excavation contractor struck a valve on SJWC's pipeline with power-driven earthmoving equipment, causing a leak and electrical damage to SJWC's equipment.

7. At its own expense, SJWC immediately repaired the leak, causing no delay or added cost to Mr. Sahadi's project.

8. On November 1, 2018, Mr. Sahadi's engineers presented all the necessary waterflow data for firefighting to SJWC.

9. There was no evidence presented that the design or engineering process was flawed or inefficient.

10. The final engineering and design drawings were available on or before December 7, 2018, earlier than the original estimate of early February 2019.

11. No delay of Sahadi's project can be attributed to SJWC's development of design and engineering drawings.

12. On November 20, 2018, Mr. Sahadi's excavator used power-driven earthmoving equipment, allegedly for the purpose of "scraping" a portion of Santella Drive, without complying with applicable provisions of California Government Code § 4216, *et seq.*, (Locate Statute).

13. On the same day, Mr. Sahadi's excavator completely uncovered a 70-foot length of SJWC's 12-inch diameter pipeline.

14. Exhibit FS-8 establishes that Mr. Sahadi's excavator used power-driven earthmoving equipment to remove substantially more than six inches of cover over a 70-foot length of SJWC's pipeline.

15. Neither Mr. Sahadi, his excavator nor any other of Mr. Sahadi's onsite contractors obtained a valid Underground Service Alert (USA) ticket, as required by the Locate Statute, to scrape anything off Santella Drive.

16. SJWC demanded Mr. Sahadi either position concrete barriers along the length of the exposed pipeline or replace all the dirt that previously covered the pipe. Mr. Sahadi refused to do either.

17. SJWC requested the Town to issue a stop-work order to Mr. Sahadi, lest Mr. Sahadi, or his contractors, cause any further damage to the pipe.

18. The Town issued a stop-work order to Mr. Sahadi alone. The scope of the stop-work order included not only Mr. Sahadi's work on Santella Drive, but also all construction work on the houses in his development project.

19. SJWC did not learn of the full scope of the stop-work order until Mr. Sahadi described its scope to an SJWC employee, Ms. Dunbar, on April 19, 2019.

20. Ms. Dunbar contacted the appropriate Town official and explained that SJWC never sought a stop-work order directed at construction of the houses themselves. The Town rescinded its stop-work order when the adaptation and repositioning of 220 feet of the pipeline was completed.

21. None of SJWC's conduct between October 1, 2018, when Mr. Sahadi met with SJWC to discuss adapting the pipeline beneath Santella Drive to

Mr. Sahadi's needs, and May 2, 2019 when all work on the pipeline was completed, created delay or added cost to Mr. Sahadi's development project.

22. SJWC obtained a single source estimate for work on 335 feet of the pipeline on December 7, 2018. The estimate was \$284,740. It was delivered to Mr. Sahadi the same day, but he refused to accept responsibility for any part of it.

23. By December 28, 2018, Mr. Sahadi completed a potholing survey of 265 feet of the pipeline. The result of the survey showed that repositioning was required for only 150 feet of the pipeline in addition to the 70 feet of exposed pipeline (a total of 220 feet of pipeline).

24. SJWC revised the \$284,740, single-source, price quotation downward to \$193,530 based on the results of potholing and presented the revised estimate to Mr. Sahadi on January 23, 2019. SJWC's revision was reasonable and caused no additional delay or added cost to Mr. Sahadi's project.

25. Mr. Sahadi refused to pay for any part of the revised \$193,530 estimate.

26. On January 28, 2019, Mr. Sahadi offered SJWC a counterproposal. Mr. Sahadi offered to deliver \$193,530 to SJWC, subject to the result of any legal proceeding that Mr. Sahadi would file seeking refund of up to the whole amount and additionally capping his liability at \$193,530.

27. SJWC's tariff does not permit SJWC to resolve disputes in the manner proposed by Mr. Sahadi and SJWC had no permission from this Commission to deviate from its tariff.

28. On March 19, 2019, SJWC accepted the low-bidder's offer of \$161,760 to reposition 220 feet of SJWC's pipeline. SJWC's decision to accept the lowest bid caused no delay or added cost to Mr. Sahadi's project, other than the actual cost of the work, \$158,570.

29. Mr. Sahadi has not reimbursed SJWC for any part of the \$158,570.

30. The spoils that were the result of the winning bidder's work were entirely removed from the project site by May 2, 2019 and caused no delay or added cost to Mr. Sahadi's project.

31. The repositioned 220 feet of SJWC's pipeline does not intersect with Mr. Sahadi's new sewer line.

32. Any other portion of SJWC's pipeline beneath Santella Drive that does intersect with Mr. Sahadi's new sewer line, is not within the scope of this proceeding.

33. Abandoning portions of the original pipeline under Santella Drive was in accordance with traditional practice by water utilities.

34. Mr. Sahadi promoted such a cost-saving procedure in the final plans he submitted to SJWC by not specifying removal of the old pipe as within the scope of work for the winning bidder.

Conclusions of Law

1. The evidence offered by Mr. Sahadi of SJWC's conduct from the date of the initial construction of the pipeline beneath Santella Drive in Los Gatos, California to and including May 2, 2019 was not sufficient to establish a violation of GO 103-A, section 451 or any provision of SJWC's applicable tariff.

2. Neither GO 103-A nor section 451 displace any provisions of California Government Code section 4216, *et seq.* (the Locate Statute).

3. It was a violation of the Locate Statute for Mr. Sahadi's excavator to excavate parts of Santella Drive without first obtaining a valid USA ticket as directed by the Locate Statute.

4. It was a violation of the Locate Statute for Mr. Sahadi's excavator to excavate parts of Santella Drive using power-driven earthmoving equipment

without first using handheld tools to determine the depth of SJWC's pipeline beneath Santella Drive.

5. It was reasonable for SJWC to request a single-source price quotation for repositioning the 70 feet of exposed pipeline underground and repositioning another 265 feet of pipe, deeper or laterally, as necessary. Doing so caused no delay or added cost to Mr. Sahadi's project.

6. SJWC did not violate any provision of GO 103-A or section 451 by requesting a single-source price quotation (\$284,740) for repositioning the 70 exposed feet of its pipeline and another 265 feet of the pipeline.

7. SJWC did not violate any provision of GO 103-A or section 451 by lowering the \$284,740 estimate to \$193,530 after receiving potholing information from Mr. Sahadi.

8. Before SJWC could lawfully accept Mr. Sahadi's counterproposal to SJWC's \$193,530 price estimate and proposal, SJWC was required to obtain the Commission's approval for SJWC to deviate from its tariff.

9. SJWC's rejection of Mr. Sahadi's counterproposal was reasonable.

10. SJWC did not violate any provision of GO 103-A or section 451 by obtaining five competitive bids for relocating 220 feet of its pipeline after Mr. Sahadi refused to take responsibility for any portion of either the \$284,740 or the \$193,530 price estimates.

11. SJWC's solicitation of five competitive bids for relocating 220 feet of the pipeline, including the 70 feet of exposed pipe, was reasonable and caused no delay or added cost to Mr. Sahadi's project.

12. SJWC did not violate any provision of GO 103-A or section 451 by repositioning 220 feet of its pipeline beneath Santella Drive for Mr. Sahadi's benefit.

13. There were no violations of any provision of GO 103-A or section 451 related to the winning bidder's performance of the pipeline repositioning contract awarded to it.

14. The record of this proceeding does not support assessing any fine or penalty against SJWC.

15. The record of this proceeding does not support issuing any injunctive relief against SJWC.

16. The record in this proceeding does not support awarding any monetary credits to Mr. Sahadi to offset against the \$158,570 invoice he has received from SJWC.

O R D E R

IT IS ORDERED that:

1. The complaint of Fred Sahadi, individually and as Trustee of the Fred Sahadi Revocable Living Trust, is dismissed with prejudice.
2. Case 19-04-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.